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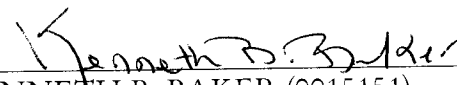
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	O1-CV-6329 CJS
COMMISSION)	
)	HON. CHARLES J. SIRAGUSA
Plaintiff,)	
)	
vs.)	
)	
EVERDRY MARKETING & MANAGEMENT)	
INC., et al.)	
)	
Defendants.)	

MOTION BY DEFENDANT, EVERDRY MARKETING
MANAGEMENT, INC. FOR SUMMARY JUDGMENT

Now comes Defendant, EverDry Marketing & Management, Inc. (hereinafter at times referred to as "EMM") by and through counsel and moves this Honorable Court pursuant to Rule 56 of the Ohio Rules of Civil Procedure for Summary Judgment, by reason that there are no issues of material fact in dispute, and as a matter of law, EMM is entitled to judgment in its favor. EMM's Brief in support is attached hereto and made apart hereof.

Respectfully submitted,


KENNETH B. BAKER (0015151)
JAVITCH, BLOCK & RATHBONE
Penton Media Building, 14th Floor
1300 East 9th Street
Cleveland, Ohio 44114-1503
Telephone: (216) 623-0000 Ext 3014
Attorney for Defendant, EverDry Marketing &
Management, Inc.

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W.D.N.Y. - ROCHESTER

CERTIFICATE OF SERVICE

The undersigned does here by certify that on the 17 day of February, 2004, I caused to be mailed by first-class mail, postage prepaid, a copy of the foregoing Motion, on all the parties at the addresses set forth below:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Robert D. Rose, Esq.
201 Varick Street, Room 1009
New York, New York 10014

Attorney for Plaintiff

SHAPIRO, ROSENBAUM, LIEBSCHUTZ & NELSON, LLP
Peter C. Nelson, Esq.
1100 Crossroads Building
Two State Street
Rochester, New York 14614

Attorney for Defendant
EverDry Management Services, Inc.

Dated: February 17, 2004



KENNETH B. BAKER (0015151)

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BRIEF IN SUPPORT

I. STATEMENT OF THE CASE

On or about June 27, 2001, the Plaintiff herein, the Equal Employment Opportunity Commission (EEOC) filed a Complaint against EverDry Waterproofing, Inc. a/k/a EverDry of Rochester and EverDry Marketing & Management, Inc. The action was brought pursuant to Title VII of the Civil Rights Act of 1994 and Title I of the Civil Rights Act of 1991. The suit sought to address alleged unlawful employment practices based upon sex. The EEOC sought relief for Stephanie DiStasio and other similarly situated employees.

Subsequently, on or about December 27, 2001, the EEOC filed an Amended Complaint changing the name of one of the Defendant Parties from EverDry Waterproofing, Inc. to EverDry Management Services, a/k/a EverDry Waterproofing and EverDry of Rochester. In addition to changing the names of one of the Parties, the EEOC also modified its initial charge. In Paragraph 6 of the initial Complaint, the EEOC stated as follows:

6. Defendant, EverDry Waterproofing, a/k/a EverDry of Rochester, is a division of Defendant EverDry Marketing & Management, Inc. Defendants have interrelated operations and the right to relief asserted herein arises out of the common series of transactions and occurrences and concerns questions of law and fact common to both parties.

In reviewing the Amended Complaint, the allegation that EMM and EverDry Marketing Services, a/k/a EverDry of Rochester are interrelated and/or that EverDry Marketing Services (hereinafter referred to as “EMS”), is a division of EMM is now absent. What the EEOC now claims in its Amended Complaint is:

6. At all relevant times Defendants have continuously been employers engaged in an industry affecting commerce within the meaning of Section 701(b)(g) and (h) of Title VII. 42 U.S.C. §2000 (b)(g) and (h) and that “since at least June 1998 ... Defendants have subjected a class of female employees to a pattern and practice of frequent and pervasive sexual harassment...” (See Amended Complaint, ¶8A).

As will be clearly established, EMM was not engaged in business in Rochester, New York, nor did EMM employ any persons in Rochester, New York. Furthermore, the facts will establish that EMM and EMS are separate and distinct legal entities. As such, not only did EMM not engage in any unlawful activities, but as a matter of law, is not an employer as defined under Title VII of the Civil Rights Act. And because as a matter of law EMM is not an Employer, summary judgment is imminently appropriate herein.

II. STATEMENT OF FACTS

EMM formerly known as Ohio State Waterproofing, Inc is an Ohio Corporation. The company was incorporated in 1985. The business of EMM is to sell franchises and as a franchisor to help set-up franchises and train franchisees in the operation of their franchise. Attached hereto as Exhibit 1 is a copy of EMM’s Article of Incorporation.

The franchises are sold under the Mark Ever-Dry. On or about October 7, 1986 the Mark Ever-Dry was registered in the United States Patent & Trademark Office as Registration No. 1,412,615. (See Exhibit 2). A subsequent Mark “EverDry” was registered on November 9, 1993. (Exhibit 3).

EverDry Management Services, Inc. (EMS) formerly known as Ohio State Management Services, Inc. is an Ohio Corporation that was incorporated on December 1, 1994. A copy of

EMS' Articles of Incorporation is attached hereto as Exhibit 4. The purpose of EMS is to operate franchises that ceased doing business until a new franchisee can be located.

EMM and EMS are separate and distinct corporations. EMM is an Ohio Close Corporation pursuant to Ohio Revised Code §1701.591. EMS is not a Closed Corporation. Each corporation has separate tax ID numbers, as well as State Charter Numbers. The tax ID number of EMM is 34-1496162 172512 (See Exhibit 5) and its Corporate Charter No. is 663211. See Exhibit 1. The Federal Tax ID No. of EMS Inc. is 34-1790079 171212. See Exhibit 6. Its Corporate Charter No. is 886928. See Exhibit 4.

In the early 1990s EMS took over a closed franchise in Rochester, New York and opened a new business. In order to effectively operate the business, EMS hired employees, managers, rented office and warehouse space, opened a bank account and installed a telephone line.

EMM did not operate a business in Rochester. EMM rented no office space or warehouse space in Rochester (nor co-signed on any lease). EMM had no employees in Rochester. EMM had no bank accounts in Rochester nor did any advertising in Rochester. Simply put, EMS conducted business in Rochester, New York; EMM did not.

In reviewing the EEOC's Amended Complaint, the EEOC makes the following allegation:

Since at least June 1998, Defendants have engaged in unlawful employment practices in violation of Sections 703 and 707 of Title VII, 42 U.S.C. §§ 2000e-2 and e-6. These practices have included, but are not limited to, the following:

- A. Defendants have subjected a class of female employees to a pattern and practice of frequent and pervasive sexual harassment which has included, but is not limited to, making unwelcome comments of a sexual nature to and about female employees, grabbing and touching female employees without their consent, and engaging in verbally and physically intimidating conduct directed at female employees, all because of their sex. Specifically, this has included, but is not limited to: a male manager grabbing the

buttocks of female employees; a male manager jumping on a female employee and simulating having sex with her; and a male manager telling a female employee to get into the backroom for a quickie, and that he wanted to “bang the shit out of” her.

- B. Although female employees complained about the sexual harassment, defendants have failed to remedy the hostile work environment or prevent further harassment.
- C. Defendants have constructively discharged female employees by maintaining a hostile work environment and failing to eliminate the harassment.

As will establish, Plaintiff’s attempt to categorize EMM and EMS as a single employer is misplaced, not supported by the facts and is contrary to law. EMM is not an employer and because it is not an employer, did not engage in those acts set forth above.

The primary complainant in the EEOC charge is a female named Stephanie DiStasio. According to Ms. DiStasio, an individual named Jay Lang who was a night manager of EMS/Rochester in its telemarketing room engaged in numerous unwelcomed activities, which the EEOC contends constitute sexual harassment. Since the inception of the lawsuit, and after the EEOC sent out letters to past employees of EMS, soliciting their participation in the present suit, there are approximately 13 women who the EEOC together with itself represent. These women are:

- 1) Lorraine Backus
- 2) Milikah Bruner
- 3) Catherine Clauss
- 4) Lili Cocilova
- 5) Stephanie DiStasio
- 6) Danielle Doty
- 7) Ashley Houghton
- 8) Nancy Hoffmeier
- 9) Joelle Lolacono
- 10) Kyley O’Brien

- 11) Anna Pompakidis¹
- 12) Meghan Powell
- 13) Jennifer Zazzaro

These alleged complaintants were employed by EMS, not employees of EMM.

Attached hereto as Exhibit 7 are the W-2s of the persons referenced above. As clearly set forth the employer is EverDry Management Services/Rochester not EMM.

As previously set forth, the principal harasser is alleged to be an individual named Jay Lang. To a lesser extent, David Bowers, the Manager of EMS/Rochester Gene Ake and a David Molinaro are alleged to have also engaged in acts labeled by the EEOC as acts of harassment. Lang, Bowers, Ake and Molinaro, like the aforesaid females are employed by EMS. See W-2 of Lang, Bowers, Ake and Molinaro attached hereto as Exhibit 8. What is beyond dispute is that none of these individuals were employed by EMM, nor paid by EMM. Attached hereto and marked as Exhibit 9 is the bank account of Ohio State Management Services k/n/a EMS. From this, Citibank checking account, the paychecks of various employees of EMS were drawn. Attached hereto and marked as Exhibit 10 are paychecks made payable to:

- 1) Stephanie M. DiStasio
- 2) Jeremy Lang
- 3) David Bowers
- 4) Kyley B. O'Brien
- 5) Anna M. Pompankidis
- 6) Nancy B. Hoffmeier
- 7) Jennifer M. Zazzaro
- 8) Catherine Clauss

¹ Anna Pompakidis has advised the EEOC she does not want to partake in the present action.

None of the Complainants, nor Lang, Bowers, Ake or Molinaro was paid by EMM. EMM's bank account is with Fifth Third Bank located at 1404 East Ninth Street, Cleveland, OH 44114. See Exhibit 11. The bank accounts of EMS and EMM were and are separate and distinct. Furthermore, none of the funds of these two (2) separate entities were ever co-mingled, nor were funds from these two entities transferred back and forth.

What has been discerned from discovery is that Ms. DiStasio after she decided to quit for the second time wrote a letter to Jack Jones on or about July 8, 1999 complaining of acts of alleged harassment. See Exhibit 12. Upon receipt of this letter, it was requested that David Bowers the Manager of the EMS/Rochester immediately investigate these accusations. Mr. Bowers did investigate and after the investigation, made a decision to terminate Mr. Lang.

The issue presented before this Honorable Court is whether EMM, which did not own EMS/Rochester, did not employ either the complaintants nor alleged harassers, nor was involved in any of the activities giving rise to any alleged acts of harassment can under the law be considered an employer. It is EMM's position that as a matter of law it is not an employer. As such, summary judgment is appropriate.

III. STANDARD OF REVIEW

Summary judgment is encouraged as a means of disposing of factually unsupported claims or defenses in order to avoid unnecessary trials when there is no genuine issue of material fact in dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Pursuant to Federal Rule of Civil Procedure 56, a Plaintiff move for summary judgment, and the Court May properly grant summary judgment, when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(b), (c). The burden to demonstrate that there is no genuine issue of material fact in dispute is on the moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 256. A party seeking summary judgment bears the initial burden of demonstrating to the court that an essential element of the non-moving party’s case is lacking. *Celotex Corp. v. Catrett*, 477 U.S. at 323. If a party is unable to make a sufficient showing as to some essential element of its case, upon which it bears the ultimate burden of proof at trial, all other facts are necessarily immaterial. *Id.* at 322-3. The non-moving party must, if he does respond, come forward with sufficient evidence to allow a reasonable trier of fact to find in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 251. Once a motion for summary judgment is made demonstrating that the moving party is entitled to judgment as a matter of law, the non-moving party must affirmatively show through denominated evidence that there is a genuine issue for trial. *Id.* at 248. The burden then shifts to the non-moving party to come forward with sufficient evidence to demonstrate that there is a factual controversy as to that issue, or to explain why such evidence is not currently available. *Id.*; Fed. R. Civ. P. 56(e). If the non-moving party fails to respond, summary judgment, if appropriate, should be entered against him. Fed. R. Civ. P. 56(e). There is no genuine issue for a trial if the record, taken as a whole, could not lead a rational trier of fact to find for the non-

moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. at 587. In the context of a motion for summary judgment, the court is required to view the facts in a light most favorable to the nonmoving party, who must be given the benefit of all reasonable inferences that may be made from the facts disclosed in the record. *Adickes v. S.H. Dress & Co.*, 398 U.S. 144 (1970).

IV. LAW AND ARGUMENT

The EEOC has sued both EMS & EMM, lumping them together as Defendants, alleging that together they engaged in discriminatory conduct. However, as the facts clearly establish, EMS & EMM are separate and distinct corporations. In fact, EMS is not even a subsidiary of EMM. As such, for EMM to be liable for the acts of EMS would be even beyond the extraordinary circumstances, the Court in *Herman v. Blockbuster Entertainment Group*, 18 F. Supp.2d 304, 308 (S.D.N.Y. 1998)² required to hold a parent liable for the acts of its subsidiary for alleged violations of Title VII.

Cases that allow a Court to consider the acts of two (2) separate but related corporations to be that of a single employer revolve around a parent/subsidiary relationship. Despite the fact that EMM and EMS do not even share this common thread, a review of those cases attempting to impose liability prove insightful.

As set forth in *Cook v. Association Shelburne, Inc.*, 69 F.3d 1235, 1241, 1240 (2d Cir. 1995), “the appropriate test under Title VII for determining when parent companies may be considered employers of a subsidiary's employees is the four-part test adopted by the Fifth, Sixth, and Eighth

² “‘A corporate entity is liable for the acts of a separate related entity only under extraordinary circumstances.’”(quoting *Murray v. Miner*, 74 F.3d 402, 404 (2d Cir.1996)).

circuits[:] . . . [A] parent and subsidiary cannot be found to represent a single, integrated enterprise in the absence of evidence of (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.” (quoting *Garcia v. Elf Atochem North America*, 28 F.3d 446, 450 (5th Cir.1994)). “We focus our inquiry, as those circuits do, on the second factor, centralized control of labor relations.” *Cook v. Association Shelburne, Inc.*, 69 F.3d 1235, 1241.

“The employee satisfies this rule if he shows participation by the defendant that is ‘sufficient and necessary to the total employment process [of the employer], even absent total control or ultimate authority over hiring decisions.’” *Parker v. Columbia Pictures Industries*, 204 F.3d 326, 341 (2d Cir.2000) (quoting *Cook*, 69 F.3d at 1241 (quoting *Armbruster v. Quinn*, 711 F.2d 1332, 1338 (6th Cir.1983))). “A crucial element of the inquiry focuses on whether the two enterprises exhibit ‘centralized control of labor relations,’ including tasks such as handling job applications, approving personnel status reports, and exercising veto power over major employment decisions.” *Parker v. Columbia Pictures Industries*, 204 F.3d 326, 341.

Therefore, it would be appropriate to determine at an initial starting point whether EMM and EMS enjoy a parent/subsidiary relationship. A subsidiary corporation as defined by Black’s Law Dictionary is “one in which another corporation owns at least a majority of the shares and thus has control”. Under Ohio law, a parent/subsidiary is defined as:³

“Parent Corporation” or “parent” “means” a domestic or foreign corporation that owns and holds record shares of another corporation, domestic or foreign entitling the holder of the shares at the time to exercise a majority of the voting power in the election of the

³ Since both Defendants are Ohio Corporations, Ohio law must be utilized to establish a parent/subsidiary relationship.

directors of the other corporation... “subsidiary corporation” or “subsidiary” means a domestic or foreign corporation of which another corporation, domestic or foreign, is the parent...” Ohio Revised Code §1701.01.

In the matter *sub judice*, a parent/subsidiary relationship, simply doesn’t exist. As shown by the documentation, EMM is an Ohio Corporation incorporated in Ohio on September 18, 1985. See Exhibit 1. EMS is an Ohio Corporation incorporated in Ohio on December 1, 1994. See Exhibit 4. Each corporation has a separate Tax ID Number and file separate Tax Returns, not a consolidated return. See Exhibits 13 and 14. EMM nor EMS own shares in the other corporation. What the corporations have in common is that Nicholas DiCello is the sole owner of each. See Exhibits 13 and 14. This, however, does not constitute a parent/subsidiary relationship.

Aside from the fact that EMM & EMS cannot be considered as parent/subsidiary, EMM, cannot be considered an employer in regards to those employees of EMS. Title VII defines employee as "an individual employed by an employer...." 42 U.S.C. § 2000e(f). An "employer" is defined (in relevant part) as "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person." 42 U.S.C. §2000e(b). A recent Second Circuit case considered the “elliptical” meaning of the definition of a Title VII "employer"- *York v. Ass’n of the Bar*, 286 F.3d 122 (2d Cir.2002). In *York*, the Second Circuit held that a direct and substantial remunerative relationship must exist between two parties for the hiring party to be considered the "employer" of an employee under Title VII. *York v. Ass’n of the Bar*, 286 F.3d 122, 126. See also *Id.*, 286 F.3d at 125 (“a prerequisite to considering whether an

individual is [an employee] is that the individual have been hired in the first instance.”) (quoting *O'Connor v. Davis*, 126 F.3d 112, 115 (2d Cir.1997), *cert. denied* 522 U.S. 1114, 118 S.Ct. 1048, 140 L.Ed.2d 112 (1998)). The *York* court observed that "the question of whether someone is or is not an employee under Title VII usually turns on whether he or she has received direct or indirect remuneration from the alleged employer." *Id.* at 125-26 (quoting *Pietras v. Bd. of Fire Comm'rs of the Farmingville Fire Dist.*, 180 F.3d 468, 473 (2d Cir.1999)). Thus, the Second Circuit reaffirmed the rule of earlier cases that "where no financial benefit is obtained by the purported employee from the employer, no 'plausible' employment relationship of any sort can be said to exist." *Id.* (quoting *O'Connor*, 126 F.3d at 115-16).

In the instant matter, those individuals who the EEOC claims to represent were employed by EMS not EMM. Furthermore, EMM did not provide any benefits to those Claimants, whether it be salary, hospitalization or a retirement plan. In the same vein, EMM did not employ those persons whom the EEOC has accused of engaging in any type of harassing tactics. Nor did EMM provide any type of benefits to those individuals. Finally, EMM had no control whatsoever of those individuals employed by EMS.

In the case of *Herman v. Blockbuster Entertainment Group*, *supra*, a number of former employees brought an employment discrimination action against the Discovery Zone and its parent corporation. Like in the present matter, it was undisputed that the alleged victims were employed by the Discovery Zone and not Blockbuster. As such, the Court held that for the Plaintiffs' claims to survive they would have to establish that Blockbuster and the Discovery Zone constitute a "single employer". *Herman*, 18 F.Supp.2d 304, 309.

In the instant matter, the records of EMS unequivocally establish that all the complainants and alleged harassers were employees of EMS. See Exhibits 7 and 8. Therefore, like in the Blockbuster case, in order for the EEOC's claims to survive against EMM, the EEOC must establish that EMS and EMM constitute a single employer. In attempting to establish this, the EEOC must produce concrete evidence, rather than some metaphysical doubt as to material facts, going to the "critical question to be answered . . . - 'What entity made the final decision regarding employment matters related to the person claiming discrimination.'" *Herman*, 18 F.Supp. 2d at 309. See, *Celotex Corp. v. Catrett*, *Matsushita Electric v Zenith Radio Corp.*, *Dister v Continental Group, Inc.*, cited *supra*.

In reviewing all four-prongs of the *Cook* test, set forth above, it will become clear that EMM and EMS are not interrelated corporations, nor do they constitute a single employer.

1. Interrelation of Operations

To help the Court in determining to what extent two entities constitute a single employer, a six-prong test was utilized by the Fifth and Second Circuit to look at the sufficiency of the interrelation of operations.

- A) Whether the Parent was involved directly in the subsidiary's daily decisions relating to production, distribution, marketing and advertising;
- B) Whether the two entities shared employees, services, records and equipment;
- C) Whether the entities commingled bank accounts, account receivables, inventories and credit lines.
- D) Whether the Parent maintained the subsidiary's books.
- E) Whether the Parent issued the subsidiary's paychecks.
- F) Whether the Parent prepared and filed the subsidiary's tax returns.

Herman, 18 F.Supp.2d 304, 309 (citing *Lusk v. Foxmeyer Health Corp.*, 129 F.3d 773, 778 (5th

Cir.1997)); *Cook v. Arrowsmith Shelburne, Inc.*, 69 F.3d 1235, 1241 (2d Cir.1995). Again, a review of these factors will reveal an embarrassing lack of commonality on which to establish a single employer.

A. Whether the Parent Was Involved Directly in the Subsidiary's Daily Decisions Relating To Production, Distribution, Marketing And Advertising.

Aside from the fact that there is no parent subsidiary relationship, EMM and EMS are engaged in different businesses. EMM sells franchises and helps a franchisee through training to operate an EverDry franchise. EMS operates a waterproofing business by actually engaging in the business of installing waterproofing. EMS hires telemarketers, sales people and production crews positions all instrumental in the sale and installation of a waterproofing system. EMM has no such positions because it does not sell nor install waterproofing. As such, the daily operation of each entity is entirely different. Furthermore, EMM is not involved directly in daily decision making, distribution, marketing or advertising of EMS.

During the period in question, 1998 through 2000, David Bowers was the Manager of EMS/Rochester. On June 25, 2003, his deposition was taken by the EEOC and by Defendant. Set forth below is but a few examples from Mr. Bowers deposition that reflects the disassociation between these two (2) separate entities.

At Page 6

Q. Have you ever had any relationship to EMM?

A. I don't believe so.

See Exhibit "A".⁴

In attempting to establish EMM's involvement with EMS, the EEOC asked the following question:

⁴ Deposition excerpts are attached as lettered exhibits.

At Page 72

Q. What did you understand the relationship to be with EMM at the time you were working at EverDry of Rochester?

A. I don't. EMM didn't have a relationship with EMS, we did.
See Exhibit "B".

Additional questioning by the EEOC established the lack of any interrelationship between the two (2) entities.

At Page 122

Q. Did anyone in Ohio ever consult with you or any one in Ohio who did installation?

A. No.
See Exhibit "C".

At Page 123

Q. Did you ever get any input from anyone in Ohio about how to handle inventory?

A. No.

Q. Did you get any input from anyone in Ohio about any particular telemarketing methods you should be using or could use?

A. No.
See Exhibit "D".

After questioning by the EEOC, Attorney Baker on behalf of EMM asked the following questions:

At Page 135

Q. So, you had total responsibility for hiring, is that correct?

A. Yes.

Q. At the time you hired people; did you ever have to get the okay from anybody at EverDry Marketing & Management, Inc.?

A. No.
See Exhibit "E".

At Page 136

Q. Now in terms of firing, part of your responsibilities was the termination of employees, correct?

A. Yes.

Q. The decision to fire was yours alone, is that correct?

A. Yes.
See Exhibit "F".

At Page 137

Q. Now who had the ability to give raises?

A. Myself.

Q. Did you ever have to contact anybody from EverDry Marketing and Management, Inc. to give raises?

A. No.

Q. Whose responsibility was it to promote?

A. Myself.

See Exhibit "G".

At Page 138

Q. You weren't required to contact anybody from EverDry Marketing & Management, Inc. were you?

A. No.

Q. Who ran the daily operations of the business?

A. Myself.

Q. Were you required before you let's say, when you got into the office very morning to contact or discuss the operation of the business with anybody from EverDry Marketing & Management?

At Page 139

A. No.

Q. At the end of the day were you required to give a report to anybody from EverDry Marketing & Management, Inc. on how the day's activities went?

A. No.

See Exhibit "H".

At Page 141

Q. Was he (Brian) required to contact EverDry Marketing & Management, Inc. on a daily basis pertaining to production?

A. No.

Q. Was he (Brian) required to contact EverDry Marketing & Management, Inc. to hire or fire anybody in the production ever?

A. No.

See Exhibit "I".

At Page 158

Q. Before a commission was paid, did you have to contact anybody from EMM to pay a commission?

A. No.

See Exhibit "J".

At Page 164

Q. Give one example of supplies you ordered.

A. General construction supplies. We'd get them at I believe Wigman's Hardware Store.

Q. Who paid for those supplies?

A. EverDry of Rochester.

- Q. Was he required to get permission from EverDry Marketing & Management before he could get those supplies?
- A. No.
Exhibit "K".

From the deposition of David Bowers and the Affidavit of Nick DiCello, it is beyond question that EMM did not have daily, weekly or monthly input into the business decisions of EMS/Rochester.

B. Whether The Two Entities Share Employees, Services, Records and Equipment

With the exception of Nick DiCello, EMM & EMS did not share employees. As can be seen from the W-2s attached hereto as Exhibit 7, the employees of EMS/Rochester were not employed by EMM. Nor were employees of EMM employed by EMS. Because the employees of EMS were not the employees of EMM, EMM cannot be liable for their actions. See *Murray v. Miner*, 74 F.3d 402 (2d Cir. 1996); *Frank v. U.S. West Inc.*, 3 F. 3d 1357 (10th Cir. 1993). Furthermore, the employment duties of each company were distinct. EMS installed waterproofing and hired sales people, telemarketers, sales persons and production crews. EMM's employees sold franchises and trained franchisees. EMM did not hire telemarketers or sales people to sell waterproofing nor production crews to install it.

Furthermore, EMS/Rochester and EMM shared no common services. EMM did not have a location in Rochester. EMM did not have an office or mailing address in Rochester. EMM did not have a bank account in Rochester.

Nor did EMM, EMS/Rochester share records and equipment. The contracts to install waterproofing and all service records and production records were those of EMS not EMM and

were kept in Rochester. The equipment of EMS/Rochester belonged to EMS and was kept in Rochester. The only commonality at all is that Nick DiCello was President of both EMM and EMS and that the corporate office of EMS was at the same address as EMM in Macedonia, Ohio.⁵

C. Whether The Entities Commingled Bank Accounts, Account Receivables, Inventories, and Credit Lines

As clearly established by Exhibits 9 and 11, EMM and EMS had separate bank accounts. The EMM bank account was with Fifth Third Bank in Cleveland, Ohio. EMS' checking account was at Citibank in Rochester, New York. None of the funds were commingled. Furthermore, there was no commingling of accounts receivable. (EMS had no accounts receivable. See Page 164 of the deposition of David Bowers) (See Exhibit "K") nor credit lines. And while EMS had inventories in order to install waterproofing. EMM did not maintain inventories.

D. Whether The Parent Maintained the Subsidiaries Books

The books and records of EMS were kept in the Rochester location and handled by the Rochester personnel. EMM did not keep nor maintain the books of EMS. See Affidavit of Nicholas DiCello.

E. Whether The Parent Issued The Subsidiary's Paychecks

EMM did not issue the paychecks of EMS. The paychecks of EMS clearly designated the Payor as "EverDry Management Services, Inc. d/b/a EverDry Waterproofing." See Exhibit "10"; and Affidavit of Nicholas DiCello.

F. Whether The Parent Prepared And Filed The Subsidiary's Tax Returns

Again, the Answer is no. EMM and EMS filed separate returns. See Exhibits "13 and 14".

⁵ For a short period of time Jack Jones who was an employee of EMM, became President of EMS when DiCello took ill.

In the instant matter, aside from the fact that there is not even a parent/subsidiary relationship, the lack of interrelationship of operations is exceedingly clear. The fact that Nicholas DiCello owns and is President of both corporations and that Jack Jones for a short period of time was involved with EMS is only a minute factor in the equation. What is exceedingly clear from the Affidavit of Nicholas DiCello and the deposition of David Bowers, is that EMM had no authority or control to hire, fire, promote or supervise the employees of EMS. See *Lusk v. Foxmeyer Health Group*, 129 F.3d 773, 778 (5th Cir. 1997) (“the mere existence of common management and ownership are not sufficient to justify treating a parent corporation and its subsidiary as a single employer.”). See also *Johnson v. Flowers Industries, Inc.*, 814 F.2d 978 (4th Cir. 1987) (In the employment context, “parent company can be employer of subsidiary’s workers if it exercises excessive control” regarding “employment practices and decisions of the subsidiary” or if the parent “dominate[s] the subsidiary’s operations . . . [such] that the parent and the subsidiary are one entity and thus one employer.”); *Dewey v. PTT Telecom Netherlands, U.S., Inc.*, 101 F.3d 1392, 1996 Westlaw 364531, *2 (2d Cir. 1996).

2. Centralized Control of Labor Relations

The second prong of the test that the EEOC must prove to establish EMM and EMS as a single employer is centralized control over labor relations. In reviewing the deposition of David Bowers and those excerpts previously set forth, it is clear that EMM had basically nothing to do with the labor relation of EMS. In the case of *Cook v. Arrowsmith Shelburne, Inc.*, 69 F.3d 1235, 241 (2d Cir. 1995), in denying Defendant’s Motion for Summary Judgment on the issue of

whether to treat a Parent/Subsidiary as a single employer, the Court held the following facts as illustrative of control of labor relations:

ASI is a wholly owned subsidiary of KDT. In addition, there is substantial evidence of an interrelation of operations between KDT and ASI. KDT ran ASI in a direct, hands-on fashion, establishing the operating practices and management practices of ASI. Moreover, KDT clearly maintained control of labor relations at ASI. For example, applications for employment with ASI went through KDT; all personnel status reports were approved by KDT; and ASI cleared all major employment decisions with KDT. Indeed, Mary Cook was herself hired as an ASI purchaser by Scott Zinnecker, the vice president of Human Resources at KDT, and was fired at the direction of Lind, who was paid directly by KDT.

Cook v. Arrowsmith Shelburne, Inc., 69 F.3d 1235, 1241 (2d Cir. 1995).

In the present matter, the factors that the *Cook* Court found persuasive are totally absent. As testified in reviewing the excerpts from the deposition of David Bowers, as well as the entire Bowers deposition. EMM had very little if anything to do with the operations and/or management of EMS. EMS did its own hiring, firing, supervision and promotion. Nowhere in the record does there exist a scintilla of evidence that EMM controlled the labor relations of EMS.⁶

Specifically, Ms. DiStasio as well as the other alleged complainants were all hired by EMS. None were hired by EMM. All were paid by EMS, none were paid by EMM. The activities of each was controlled and supervised by EMS, not EMM. Pertaining to the alleged harassers, again all were hired by and paid by EMS, not by EMM. Promotions and supervision were done by EMS, not by EMM.

As David Bowers testified at p. 120, in response to a question by the EEOC:

⁶ The relationship of EMM and EMS to a limited extent resembled that of a franchisor/franchisee; in that like with a franchisee, EMM at times came to Rochester to observe its operation. See Affidavit of Nicolas DiCello.

Q. What about training from EMM that was done for yourself or other managers?

A. Virtually wasn't any. We were self-contained. We usually took care of our stuff in-house. See Exhibit "L".

At Page 165

Q. If there was a labor problem in Rochester who handled that labor problem?

A. Brian.

Q. What if there was a labor problem in your part of the operation, for instance, among the sales people... ?

A. The sales people I dealt with directly. If in telemarketing or lead flow, usually the telemarketing would there.

Q. To resolve a labor production, whether it was lead flow, production, sales people, were you required to go to EMM first to get any type of direction?

A. No.

Q. So you handled your own labor problems?

A. Yes.

See Exhibit "M".

Furthermore, EMS, not EMM, handled the investigation of the alleged harassment.

At Page 35 of Bowers Deposition

Q. How many times do you recall talking to Nick about Stephanie DiStasio?

A. Maybe twice.

Q. If you're able to break it down for me, let's just talk about the first time you spoke to him about Stephanie. How did that occur?

A. Came to my attention that there was an issue. I talked to him. He suggested we do an investigation. I did an investigation and unfortunately, we found this young man had said some wrong things. And as we did our investigation, that we let this young man go.

Q. When you say we did an investigation, was there anyone else doing that aside from yourself?

A. No - Just myself

See Exhibit "N".

At Page 165

Q. So, the company that made the final decision pertaining to the DiStasio matter in firing Jay Lang was EverDry of Rochester.

A. Yes.

See Exhibit "M".

As testified to by David Bowers, the general manager of EMS/Rochester, he conducted the investigation and it was his decision to fire Jay Lang. There is not a shred of evidence to suggest that approval of EMM was sought or obtained or required with aspect to the handling of the alleged discriminatory practices. It is clear that EMS/Rochester made the final decisions regarding the issues herein. And, as set forth in Cook cited supra, this is of paramount importance in deciding whether two separate entities can be considered as a single employer. The absence of EMM making the decision regarding the person claiming discrimination, precludes this Court from finding EMM & EMS constitute a single employer. See *Duffy v. Drake Beam Morin*, 1998 Westlaw 252063 (S.D.N.Y. 1998). (Case attached).

3. Common Management

The fact that Nicholas DiCello is President of EMM and EMS and Judy Garvin served as secretary of both corporations does not establish that EMM exercised control over the operations and employment practice of EMS. See, *Blockbuster, supra* at 312.

As previously set forth EMM is a closely held corporation, EMS is not. As such, their management structures are different. No person at EMM, with the exception of DiCello, who was President of EMS, had daily contact with EMS. EMS had its own separate management team. David Bowers was the General Manager of EverDry/Rochester. Brian was the Manager of Production of Rochester. EMS had managers for its telemarketing department. On the other hand, EMM did not have a General Manager, did not have a Production Manager, and did not have a telemarketing department. The lack of supervision by EMM is summarized by Bowers.

At Page 143 of Bowers Deposition

Q. Give me an example of business decisions and/or would make on a daily basis.

A. I would meet individually with each of the six or eight departments, find out where they are as far as their targets or goals, are they on line, are they not, what is our game plan is to change that, what modifications are we making, will that work, will it not work. Operational.

Q. Were you required to go over that game plan with EverDry Marketing & Management, Inc.?

A. No.

See Exhibit "O".

Also, see Bowers at Page 138 and 139 wherein Bowers describes the lack of any supervision by EMM and reconfirming EMS/Rochester as "self contained". See Exhibit "H".

4. Common Ownership

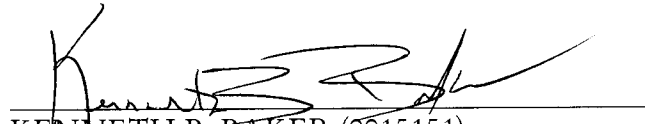
In Blockbuster, see cited supra, the Court found that the fact that Blockbuster was a majority shareholder in Discovery Zone was not in the absence of participation in employment and labor decisions, not determinative that the two entities constitute a single employer. The record is replete with facts that all hiring and firing decisions were made by the general manager of EMS/Rochester. There's not a single fact to support that EMM played any role in controlling EMS' employment decision. As such, the fact that both companies were owned by Nicholas DiCello is meaningless in the absence of centralized control; common ownership is not synonymous with centralized control. *Kellett v. Glaxo Enterprises, Inc.*, 1994 Westlaw 669975 (S.D.N.Y. 1994) and the lack of centralized control by EMM of EMS precludes the finding that EMS & EMM can be considered as a single employer. See also *DaSilva v. Kinsbo Intern. Corp.*, 210 F.Supp.2d 241, 244 (S.D.N.Y. 2000) *aff'd.*, 229 F.3d 358 (2d Cir. 2000).

V. CONCLUSION

Based upon the foregoing there can be no dispute that EMM is not in a parent subsidiary relationship with EMS. There can be no dispute that EMM is not an employer of those persons employed by EMS, was involved in daily decision making of EMS, or involved in its labor relations. EMM and EMS as a matter of law cannot be considered as a single employer. As a matter of law, EMM is entitled to Summary Judgment.

WHEREFORE, it is respectfully requested that this Court grant EMM's Motion for Summary Judgment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth B. Baker", is written over a horizontal line.

KENNETH B. BAKER (0015151)
JAVITCH, BLOCK & RATHBONE
Penton Media Building, 14th Floor
1300 East 9th Street
Cleveland, Ohio 44114-1503
Telephone: (216) 623-0000 Ext 3014
Attorney for Defendant, EverDry Marketing &
Management, Inc.

F0750-1477



Department of State

The State of Ohio

Sherrod Brown

Secretary of State

663211

Certificate

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous Filings: that said records show the filing and recording of: ARF

of:

OHIO STATE WATER-SEEDING, INC.

United States of America
State of Ohio
Office of the Secretary of State

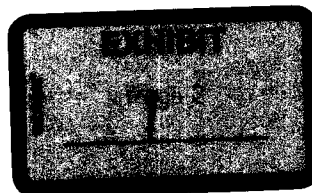


Recorded on Roll F750 at Frame 1478 of
the Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State, at the
City of Columbus, Ohio, this 21TH day of SEP,

A.D. 19 1967

Sherrod Brown
Sherrod Brown
Secretary of State



Certified Corporation & Ohio State Code
 Code and 14-0-1
 4103 A

F676-1178

CORPORATION FOR PROFIT
 (NO UNPAID SHARES WITH OR WITHOUT PAR VALUE)

Articles of Incorporation

— OF —

APPROVED
 FOR FILING

By SEDate 9-20-83Amount 500

Ohio State Waterproofing, Inc.
 Name of Corporation

The undersigned, a majority of whom are citizens of the United States, desiring to form a Corporation, for profit, under Sections 1701.01 et seq. of the Revised Code of Ohio, do hereby certify:

FIRST. The name of said corporation shall be Ohio State Waterproofing, Inc.

SECOND. The place in Ohio where its principal office is to be located is _____
365 E. Highland Road, Macedonia, Ohio _____ County.
 (City, Village or Township)

THIRD. The purpose or purposes for which it is formed are:

1. The franchising of businesses that engage in residential and commercial waterproofing
2. Residential and commercial waterproofing
3. To engage in any and all other lawful acts or activities for which corporations may be formed under Section 1701.01 to 1701.98 inclusive of the Ohio Revised Code

FOURTH. The number of shares which the corporation is authorized to have outstanding is Five Hundred (500), all of which shall be without par value.

~~The maximum number of shares which the corporation is authorized to have outstanding is _____, all of which shall be _____ Dollars (\$ _____) each.~~

FIFTH. The amount of capital with which the corporation will begin business is Five Hundred Dollars (\$ 500.00).

IN WITNESS WHEREOF, We have hereunto subscribed our names, this 12 day of September 19 83

OHIO STATE WATERPROOFING, INC.
 NAME OF CORPORATION

Richard B. Vokerman
 Signature

Victor M. Javitch
 Signature

Kenneth B. Baker
 Signature

CORPORATORS NAMES SHOULD BE TYPED
 & PRINTED BEHIND SIGNATURES

* Eliminate paragraph not required.

F0750-1479

ALL STATE LEGAL SUPPLY CO
314 Prospect Ave., Cleveland, Ohio 44119

4103B

Original Appointment of Agent

The undersigned, being at least a majority of the incorporators of Ohio State
(Name of Corporation)
Waterproofing, Inc.

hereby appoint Kenneth B. Baker
(Name of Agent)
 a natural person resident in the county in which the corporation has its principal office, ~~as corporation~~
~~having its business located in the county in which~~ Ohio State Waterproofing, Inc.
(Name of Corporation)

has its principal office (~~state not shown not applicable~~), upon whom any process, notice or demand
 required or permitted by statute to be served upon the corporation may be served. His (Its) complete

address is 1127 Euclid Avenue, Cleveland, Ohio
(Street or Avenue) (City or Village)

Cuyahoga County, Ohio.

OHIO STATE WATERPROOFING, INC.
(Name of Corporation)

Richard M. Zuckerman

Victor M. Javitch

Kenneth B. Baker

(INCORPORATORS NAMES SHOULD BE TYPED OR PRINTED BENEATH SIGNATURES)

Cleveland

Ohio

September 19

1955

Ohio State Waterproofing, Inc.

Gentlemen: It is hereby acknowledged hereby, acceptance of appointment as agent of
 your corporation upon whom process, tax notices or demands may be served.

By

Secretary



The State of Ohio

Bob Taft

Secretary of State

663211

Certificate

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous Filings; that said records show the filing and recording of: AMD MIS CHN

of:

EVERDRY MARKETING & MANAGEMENT, INC. FORMERLY OHIO STATE WATERPROOFING, INC

United States of America
State of Ohio
Office of the Secretary of State

Recorded on Roll 5933 at Frame 1347 of
the Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State at

Columbus, Ohio, this 7TH day of JULY ,

A.D. 19 97 .



Bob Taft
Bob Taft
Secretary of State



Prescribed by
BOB TAFT, Secretary of State
30 East Broad Street, 14th Floor
Columbus, Ohio 43266-0418
Form SH-AMD (January 1991)

05933-1347

Charter No. 663011
Approved EJS
Date 7-7-97
Fee \$35.00

97060617401

CERTIFICATE OF AMENDMENT by Shareholders to the Articles of Incorporation of

OHIO STATE WATERPROOFING, INC.

(Name of Corporation)

Nicholas DiCello, who is:

☐ Chairman of the Board ☒ President ☐ Vice President (check one)

and

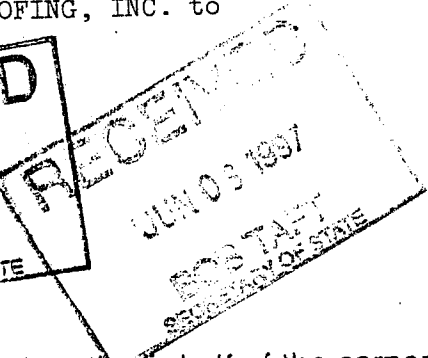
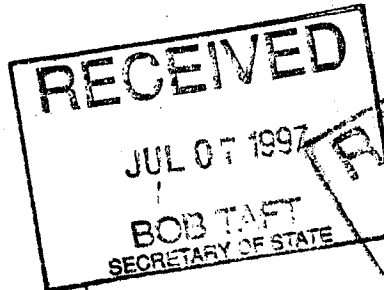
Judy Garvin, who is: ☒ Secretary ☐ Assistant Secretary (Check one)

of the above named Ohio corporation for profit do hereby certify that: (check the appropriate box and complete the appropriate statements)

☒ a meeting of the shareholders was duly called for the purpose of adopting this amendment and held on May 20, 1997 at which meeting a quorum of the shareholders was present in person or by proxy, and by the affirmative vote of the holders of shares entitling them to exercise 100% % of the voting power of the corporation.

☐ in a writing signed by all of the shareholders who would be entitled to notice of a meeting held for that purpose, the following resolution to amend the articles was adopted:

TO CHANGE THE NAME OF THE CORPORATION FROM OHIO STATE WATERPROOFING, INC. to
EVERDRY MARKETING & MANAGEMENT, INC.



IN WITNESS WHEREOF, the above named officers, acting for and on the behalf of the corporation, have hereto subscribed their names this 20th day of May, 1997

By Nicholas DiCello (Chairman, President, Vice President)

By Judy Garvin (Secretary, Assistant Secretary)

NOTE: Ohio law does not permit one officer to sign in two capacities, Two separate signatures are required, even if this necessitates the election of a second officer before the filing can be made.

Int. Cl.: 37

Prior U.S. Cl.: 103

United States Patent and Trademark Office

Reg. No. 1,412,615

Registered Oct. 7, 1986

**SERVICE MARK
PRINCIPAL REGISTER**

EVER-DRY

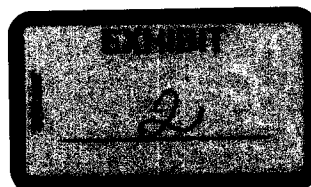
EVER-DRY WATERPROOFING, INC. (OHIO
CORPORATION)
365 EAST HIGHLAND ROAD
MACEDONIA, OH 44056

FIRST USE 9-1-1984; IN COMMERCE
9-9-1984.

SER. NO. 544,672, FILED 6-24-1985.

FOR: BASEMENT WATERPROOFING SERV-
ICES, IN CLASS 37 (U.S. CL. 103).

MARGERY A. TIERNEY, EXAMINING ATTOR-
NEY



Int. Cl.: 40

Prior U.S. Cl.: 106

United States Patent and Trademark Office

Reg. No. 1,803,438

Registered Nov. 9, 1993

**SERVICE MARK
PRINCIPAL REGISTER**

EVERDRY

OHIO STATE WATERPROOFING, INC. (OHIO
CORPORATION)
365 EAST HIGHLAND ROAD
MACEDONIA, OH 44056

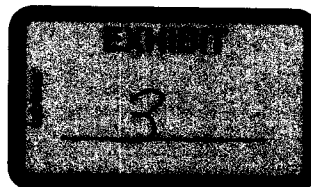
FOR: BASEMENT AND BELOW GRADE WA-
TERPROOFING SERVICES, IN CLASS 40 (U.S.
CL. 106).

FIRST USE 9-1-1984; IN COMMERCE
9-9-1984.

OWNER OF U.S. REG. NO. 1,412,615.

SER. NO. 74-367,726, FILED 3-15-1993.

ALICE SUE CARRUTHERS, EXAMINING AT-
TORNEY





The State of Ohio

Bob Taft

Secretary of State

886928

Certificate

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous Filings; that said records show the filing and recording of: ARF MIS

of:

OHIO STATE MANAGEMENT SERVICES, INC.

United States of America
State of Ohio
Office of the Secretary of State

Recorded on Roll 4297 at Frame 1193 of
the Records of Incorporation and Miscellaneous Filings.

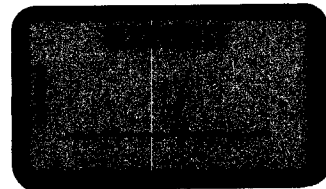
Witness my hand and the seal of the Secretary of State at

Columbus, Ohio, this 1ST day of DEC ,

A.D. 19 94 .



Bob Taft
Bob Taft
Secretary of State



Approved	<u>KN</u>
Date	<u>12/1/94</u>
Fee	<u>\$ 85.00</u>

94110813901

Articles of Incorporation

(Under Chapter 1701 of the Ohio Revised Code)
Profit Corporation

The undersigned, desiring to form a corporation, for profit, under Sections 1701.01 et seq. of the Ohio Revised Code, do hereby state the following:

FIRST. The name of said corporation shall be _____

OHIO STATE MANAGEMENT SERVICES, INC.

SECOND. The place in Ohio where its principal office is to be located is _____

365 East Highland Road, Macedonia, Ohio 44056, _____ Summit County.
(City, Village or Township)

THIRD. The purposes for which it is formed are:

1. To manage troubled Ever-Dry Franchises.
2. To engage in all lawful activities for which a corporation may engage under the laws of the State of Ohio.

Original Appointment of Statutory Agent**Ohio Corporation**

Charter No. _____
Approved _____
Date _____
Fee _____

The undersigned, being at least a majority of the incorporators of _____

OHIO STATE MANAGEMENT SERVICES, INC.
(Name of Corporation)

, hereby appoint

Kenneth B. Baker

(Name of Agent)

to be statutory agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served.

Complete address of the agent is: 601 Rockwell Avenue
601 Rockwell Building - 6th Floor
(Street)

Cleveland

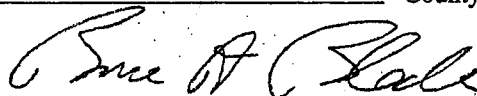
(City or Village)

Cuyahoga

County, Ohio

44114-1601

(Zip Code)

Date: November 4, 1994


Bruce A. Block

(Incorporator)



Kenneth B. Baker

(Incorporator)



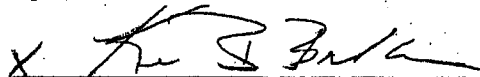
Michele Polito Soucie

(Incorporator)

(Incorporators names should be typed or printed beneath signatures)

Acceptance of AppointmentThe undersigned, Kenneth B. Baker, named herein as the statutory agentfor OHIO STATE MANAGEMENT SERVICES, INC., hereby acknowledges and accepts
(name of corporation)

the appointment of statutory agent for said corporation.



Statutory Agent Kenneth B. Baker

Instructions

- 1) Profit and non-profit articles of incorporation must be accompanied by an original appointment of agent. R.C. 1701.04(C), 1702.04(C).
- 2) The statutory agent for a corporation may be (a) a natural person who is a resident of Ohio, or (b) an Ohio corporation or a foreign profit corporation licensed in Ohio which has a business address in this state and is explicitly authorized by its articles of incorporation to act as a statutory agent. R.C. 1701.07(A), 1702.06(A).
- 3) The agent's complete street address must be given; a post office box number is not acceptable. R.C. 1701.07(C), 1702.06(C).
- 4) An original appointment of agent form must be signed by at least a majority of the incorporators of the corporation. R.C. 1701.07(B), 1702.06(B).

FOURTH. The number of shares which the corporation is authorized to have outstanding is


Seven Hundred Fifty (750)

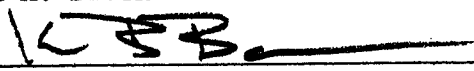
(Please state whether shares are common or preferred, and their par value. Shares will be recorded as common with no par value unless otherwise indicated.)

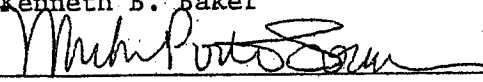
IN WITNESS WHEREOF, We have hereunto subscribed our names, this 4th day
of November, 19 94.

OHIO STATE MANAGEMENT SERVICES, INC.

(Name of Corporation)

By: , Incorporator
Bruce A. Block

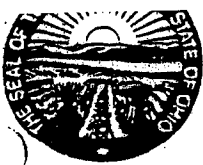
By: , Incorporator
Kenneth B. Baker

By: , Incorporator
Michele Polito Soucie

Print or type incorporators' names below their signatures.

INSTRUCTIONS

- 1) Please see Section 111.16(A) of the Ohio Revised Code or contact the Secretary of State's Office (614-466-3910) to determine the correct fee. Please make checks payable to the Secretary of State of Ohio.
- 2) Articles will be returned unless accompanied by an Original Appointment of Statutory Agent. Please see Section 1701.07 of the Ohio Revised Code.



BOB TAFT, Secretary of State
 30 East Broad Street, 14th Floor
 Columbus, Ohio 43266-0418
 Form SH-AMD (January 1991)

Approved EST
 Date 7-7-97
 Fee 35 -

97060617403

CERTIFICATE OF AMENDMENT by Shareholders to the Articles of Incorporation of

OHIO STATE MANAGEMENT SERVICES, INC.
 (Name of Corporation)

Nicholas DiCello, who is:

☐ Chairman of the Board ☒ President ☐ Vice President (check one)

and

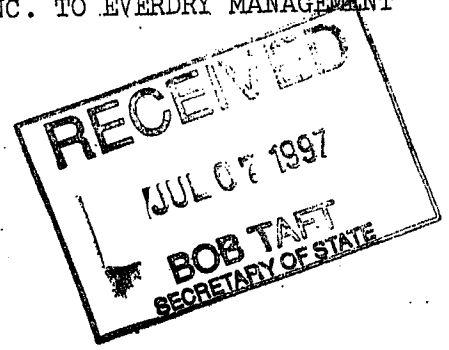
Judy Garvin, who is: ☒ Secretary ☐ Assistant Secretary (Check one)

of the above named Ohio corporation for profit do hereby certify that: (check the appropriate box and complete the appropriate statements)

☒ a meeting of the shareholders was duly called for the purpose of adopting this amendment and held on May 20, 19 97 at which meeting a quorum of the shareholders was present in person or by proxy, and by the affirmative vote of the holders of shares entitling them to exercise 100% % of the voting power of the corporation.

☐ in a writing signed by all of the shareholders who would be entitled to notice of a meeting held for that purpose, the following resolution to amend the articles was adopted:

TO CHANGE THE NAME OF OHIO STATE MANAGEMENT SERVICES, INC. TO EVERDRY MANAGEMENT SERVICES, INC.



IN WITNESS WHEREOF, the above named officers, acting for and on the behalf of the corporation, have hereto subscribed their names this 21st day of MAY, 19 97.

By [Signature]
 (Chairman, President, Vice President)

By [Signature]
 (Secretary, Assistant Secretary)



NOTE: Ohio law does not permit one officer to sign in two capacities, Two separate signatures are required, even if this necessitates the election of a second officer before the filing can be made

Mark the "X" in this box only if there is a change to Employer Identification Number (EIN) or Name.

See instructions on page 1.

BANK NAME/
DATE STAMP

EIN 34-1496162 172512

EVERDRY MARKETING AND MANAGEMENT
INC

365 E HIGHLAND RD
MACEDONIA OH 44056-2103

Part 1 only use Type of IRA		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
941	945	0	0	0	0
990-C	1120	0	0	0	0
943	990-T	0	0	0	0
720	990-PF	0	0	0	0
CT-1	1042	0	0	0	0
940		0	0	0	0

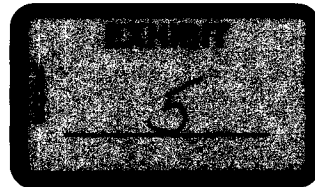
62

FOR BANK USE IN MICR ENCODING

17 3

Telephone number ()

Federal Tax Deposit Coupon
Form 8109 (Rev. 10-96)



Mark the "X" in this box only if there is a change to Employer Identification Number (EIN) or Name.

See instructions on page 1.

BANK NAME/
DATE STAMP

EIN 34-1790079 171212

EVERYDRY MANAGEMENT SERVICES INC
365 E HIGHLAND RD
MACEDONIA OH 44056-2103

941	945	1st Quarter
990-C	1120	2nd Quarter
943	990-T	3rd Quarter
720	990-PF	4th Quarter
CT-1	1042	
940		

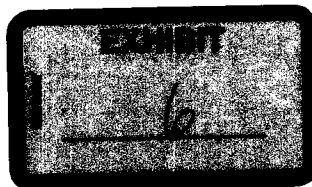
62

FOR BANK USE IN MICR ENCODING

17 3

Telephone number ()

Federal Tax Deposit Coupon
Form 8109 (Rev. 10-96)



a Control number 666		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 53.00		2 Federal income tax withheld 0.00	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 53.00		4 Social security tax withheld 3.29	
				5 Medicare wages and tips 53.00		6 Medicare tax withheld 0.77	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 091-64-1853				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) DOUGLAS J. ARGENTIERE 122 ELDER ST ROCHESTER NY 14606				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 53.00		18 State income tax 0.00		19 Locality name NY NO C	
				20 Local wages, tips, etc. 53.00		21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 292		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 2587.07		2 Federal income tax withheld 68.86	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 2587.07		4 Social security tax withheld 160.40	
				5 Medicare wages and tips 2587.07		6 Medicare tax withheld 37.51	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 107-44-1217				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) LORRAINE BACKUS 396 WIMBLEDON ROAD ROCHESTER NY 14617				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 2587.07		18 State income tax 15.49		19 Locality name NY NO C	
				20 Local wages, tips, etc. 2587.07		21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

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a Control number 1453		22222		Void <input type="checkbox"/>	For Official Use Only OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 412.00		2 Federal income tax withheld 0.00
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 412.00		4 Social security tax withheld 25.54
				5 Medicare wages and tips 412.00		6 Medicare tax withheld 5.97
				7 Social security tips 0.00		8 Allocated tips
d Employee's social security number 064-66-7799				9 Advance EIC payment		10 Dependent care benefits
e Employee's name (first, middle initial, last) MELIKAH L. BRUNER				11 Nonqualified plans		12 Benefits included in box 1
1364 NORTON ST ROCHESTER NY 14621				13 See instrs. for box 13		14 Other
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>
f Employee's address and ZIP code						
16 State NY	Employer's state I.D. no. 34-1790079	17 State wages, tips, etc. 412.00	18 State income tax 0.30	19 Locality name NY NO C	20 Local wages, tips, etc. 412.00	21 Local income tax 0.00

Form **W-2** Wage and Tax **1999** Statement

36-2515832

Department of the Treasury—Internal Revenue Service
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a Control number 1074		22222		Void <input type="checkbox"/>		For Official Use Only OMB No. 1545-0008											
b Employer identification number 34-1790079				1 Wages, tips, other compensation 4217.04		2 Federal income tax withheld 441.32											
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 4217.04		4 Social security tax withheld 261.46											
				5 Medicare wages and tips 4217.04		6 Medicare tax withheld 61.15											
				7 Social security tips 0.00		8 Allocated tips											
				9 Advance EIC payment		10 Dependent care benefits											
d Employee's social security number 054-60-6854				11 Nonqualified plans		12 Benefits included in box 1											
e Employee's name (first, middle initial, last) SHERRI L. CLARK PO BOX 92072 ROCHESTER NY 14692				13 See instrs. for box 13		14 Other											
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>					
f Employee's address and ZIP code				16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 4217.04		18 State income tax 41.09		19 Locality name NY NO C		20 Local wages, tips, etc. 4217.04		21 Local income tax 0.00	

Form W-2 Wage and Tax Statement 1999

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a Control number 1480		22222		Void <input type="checkbox"/>		For Official Use Only OMB No. 1545-0008											
b Employer identification number 34-1790079				1 Wages, tips, other compensation 196.00		2 Federal income tax withheld 0.00											
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 196.00		4 Social security tax withheld 12.15											
				5 Medicare wages and tips 196.00		6 Medicare tax withheld 2.84											
				7 Social security tips 0.00		8 Allocated tips											
				9 Advance EIC payment		10 Dependent care benefits											
d Employee's social security number 115-68-6395				11 Nonqualified plans		12 Benefits included in box 1											
e Employee's name (first, middle initial, last) CATHERINE A F. CLAUSS 168 MAIN ST APT 4 BROCKPORT NY 14420				13 See instrs. for box 13		14 Other											
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>					
f Employee's address and ZIP code				16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 196.00		18 State income tax 0.00		19 Locality name NY NO C		20 Local wages, tips, etc. 196.00		21 Local income tax 0.00	

Form W-2 Wage and Tax Statement 1999

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a Control number 1415		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 191.00		2 Federal income tax withheld 7.35	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 191.00		4 Social security tax withheld 11.84	
				5 Medicare wages and tips 191.00		6 Medicare tax withheld 2.77	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 095-66-6272				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) MELANIE COCCHIARA 4718 DEWEY AVE APT 4 ROCHESTER NY 14612				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 191.00		18 State income tax 1.17	
				19 Locality name NY NO C		20 Local wages, tips, etc. 191.00	
						21 Local income tax 0.00	

Form W-2 Wage and Tax Statement 1999

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 348		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 2674.56		2 Federal income tax withheld 0.00	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 2674.56		4 Social security tax withheld 165.82	
				5 Medicare wages and tips 2674.56		6 Medicare tax withheld 38.78	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 111-50-3445				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) LILL J. COCILOVA 233 RIDGEWAY AVE ROCHESTER NY 14615				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 2674.56		18 State income tax 0.51	
				19 Locality name NY NO C		20 Local wages, tips, etc. 2674.56	
						21 Local income tax 0.00	

Form W-2 Wage and Tax Statement 1999

36-2515832

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a Control number 1364		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 2120.88		2 Federal income tax withheld 52.76	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 2120.88		4 Social security tax withheld 131.49	
				5 Medicare wages and tips 2120.88		6 Medicare tax withheld 30.75	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 108-30-5218				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) BEVERLY A. DIPACOLA 644 ELMGROVE RD ROCHESTER NY 14606				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 2120.88		18 State income tax 8.33	
						19 Locality name NY NO C	
						20 Local wages, tips, etc. 2120.88	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement** **1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 321		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 2653.25		2 Federal income tax withheld 253.70	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 2653.25		4 Social security tax withheld 164.50	
				5 Medicare wages and tips 2653.25		6 Medicare tax withheld 38.47	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 119-72-9440				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) STEPHANIE M. DISTASIO 14 CHARIE NE DRIVE ROCHESTER NY 14606				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 2653.25		18 State income tax 17.40	
						19 Locality name NY NO C	
						20 Local wages, tips, etc. 2653.25	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement** **1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 1093		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 25861.81		2 Federal income tax withheld 1753.37	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 25861.81		4 Social security tax withheld 1603.43	
				5 Medicare wages and tips 25861.81		6 Medicare tax withheld 375.00	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 126-56-2662				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) DOUGLAS J. DONOVAN 729 LEE RD ROCHESTER NY 14606				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 25861.81		18 State income tax 641.95		19 Locality name NY NO C	
				20 Local wages, tips, etc. 26174.65		21 Local income tax 0.00	

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Form **W-2 Wage and Tax Statement 1999**

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Department of the Treasury—Internal Revenue Service

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a Control number 718		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 10960.72		2 Federal income tax withheld 499.36	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 10960.72		4 Social security tax withheld 679.56	
				5 Medicare wages and tips 10960.72		6 Medicare tax withheld 158.93	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 097-72-9711				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) DANIELLE M. DOTY 1485 VROOM RD SPENCEPORT NY 14559				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 10960.72		18 State income tax 116.01		19 Locality name NY NO C	
				20 Local wages, tips, etc. 10960.72		21 Local income tax 0.00	

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Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 1429		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008									
b Employer identification number 34-1790079				1 Wages, tips, other compensation 8121.95		2 Federal income tax withheld 227.08									
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 8121.95		4 Social security tax withheld 503.56									
				5 Medicare wages and tips 8121.95		6 Medicare tax withheld 117.77									
				7 Social security tips 0.00		8 Allocated tips									
d Employee's social security number 128-54-0076				9 Advance EIC payment		10 Dependent care benefits									
e Employee's name (first, middle initial, last) NANCY B. HOFFMEIER 10-F RAMONA PARK ROCHESTER NY 14615				11 Nonqualified plans		12 Benefits included in box 1									
				13 See instrs. for box 13		14 Other									
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>			
f Employee's address and ZIP code				16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 8121.95		18 State income tax 96.72		19 Locality name NY NO C		20 Local wages, tips, etc. 8121.95		21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 1390		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008									
b Employer identification number 34-1790079				1 Wages, tips, other compensation 681.00		2 Federal income tax withheld 23.43									
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 681.00		4 Social security tax withheld 42.22									
				5 Medicare wages and tips 681.00		6 Medicare tax withheld 9.87									
				7 Social security tips 0.00		8 Allocated tips									
d Employee's social security number 101-72-0033				9 Advance EIC payment		10 Dependent care benefits									
e Employee's name (first, middle initial, last) ASHLEY R. HOUGHTON 281 JAMESTOWN TERR ROCHESTER NY 14615				11 Nonqualified plans		12 Benefits included in box 1									
				13 See instrs. for box 13		14 Other									
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>			
f Employee's address and ZIP code				16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 681.00		18 State income tax 2.42		19 Locality name NY NO C		20 Local wages, tips, etc. 681.00		21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 1336		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008									
b Employer identification number 34-1790079				1 Wages, tips, other compensation 9517.30		2 Federal income tax withheld 719.70									
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44036				3 Social security wages 9517.30		4 Social security tax withheld 590.07									
				5 Medicare wages and tips 9517.30		6 Medicare tax withheld 138.00									
				7 Social security tips 0.00		8 Allocated tips									
				9 Advance EIC payment		10 Dependent care benefits									
d Employee's social security number 065-56-9363				11 Nonqualified plans		12 Benefits included in box 1									
e Employee's name (first, middle initial, last) LESLIE M. LIESE JR 57B LAKESHORE BLVD ROCHESTER NY 14617				13 See instrs. for box 13		14 Other									
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>			
f Employee's address and ZIP code				16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 9517.30		18 State income tax 193.91		19 Locality name NY NO C		20 Local wages, tips, etc. 9517.30		21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

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a Control number 454		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008									
b Employer identification number 34-1790079				1 Wages, tips, other compensation 408.00		2 Federal income tax withheld 8.58									
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44036				3 Social security wages 408.00		4 Social security tax withheld 25.30									
				5 Medicare wages and tips 408.00		6 Medicare tax withheld 5.92									
				7 Social security tips 0.00		8 Allocated tips									
				9 Advance EIC payment		10 Dependent care benefits									
d Employee's social security number 067-68-0404				11 Nonqualified plans		12 Benefits included in box 1									
e Employee's name (first, middle initial, last) JOELLE T. LOIACONO 42 BRAMBLEWOOD LN ROCHESTER NY 14624				13 See instrs. for box 13		14 Other									
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>			
f Employee's address and ZIP code				16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 408.00		18 State income tax 0.00		19 Locality name NY NO C		20 Local wages, tips, etc. 408.00		21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 787		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 26.25		2 Federal income tax withheld 0.00	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 26.25		4 Social security tax withheld 1.63	
				5 Medicare wages and tips 26.25		6 Medicare tax withheld 0.38	
				7 Social security tips 0.00		8 Allocated tips	
				9 Advance EIC payment		10 Dependent care benefits	
d Employee's social security number 084-56-3666				11 Nonqualified plans		12 Benefits included in box 1	
e Employee's name (first, middle initial, last) JIMMY A. NASH 477 GLENWOOD AVE ROCHESTER NY 14606				13 See instrs. for box 13		14 Other	
				15 Statutory employee <input type="checkbox"/> Deceased <input type="checkbox"/> Pension plan <input type="checkbox"/> Legal rep. <input type="checkbox"/> Deferred compensation <input type="checkbox"/>			
f Employee's address and ZIP code		16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 26.25		18 State income tax 0.00	
				19 Locality name NY NO C		20 Local wages, tips, etc. 26.25	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 231		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 465.00		2 Federal income tax withheld 35.55	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 465.00		4 Social security tax withheld 28.83	
				5 Medicare wages and tips 465.00		6 Medicare tax withheld 6.74	
				7 Social security tips 0.00		8 Allocated tips	
				9 Advance EIC payment		10 Dependent care benefits	
d Employee's social security number 089-68-4337				11 Nonqualified plans		12 Benefits included in box 1	
e Employee's name (first, middle initial, last) KYLEY B. O'BRIEN 54 BROOKVIEW RD ROCHESTER NY 14624				13 See instrs. for box 13		14 Other	
				15 Statutory employee <input type="checkbox"/> Deceased <input type="checkbox"/> Pension plan <input type="checkbox"/> Legal rep. <input type="checkbox"/> Deferred compensation <input type="checkbox"/>			
f Employee's address and ZIP code		16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 465.00		18 State income tax 0.87	
				19 Locality name NY NO C		20 Local wages, tips, etc. 465.00	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 714		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 48.00		2 Federal income tax withheld 0.00	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 48.00		4 Social security tax withheld 2.98	
				5 Medicare wages and tips 48.00		6 Medicare tax withheld 0.70	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 131-62-3483				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) KARA D. PADOLESKI 261 PONDVIEW HTS ROCHESTER NY 14612				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 48.00		18 State income tax 0.00	
				19 Locality name NY NO C		20 Local wages, tips, etc. 48.00	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 600		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 5110.24		2 Federal income tax withheld 328.80	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 5110.24		4 Social security tax withheld 316.83	
				5 Medicare wages and tips 5110.24		6 Medicare tax withheld 74.10	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 067-74-8321				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) ANNA M. PAMPAUKIDIS 48 GATES MANOR DR ROCHESTER NY 14606				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 5110.24		18 State income tax 42.78	
				19 Locality name NY NO C		20 Local wages, tips, etc. 5110.24	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 1482		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008							
b Employer identification number 34-1790079				1 Wages, tips, other compensation 283.00		2 Federal income tax withheld 19.50							
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 283.00		4 Social security tax withheld 17.55							
				5 Medicare wages and tips 283.00		6 Medicare tax withheld 4.10							
				7 Social security tips 0.00		8 Allocated tips							
				9 Advance EIC payment		10 Dependent care benefits							
d Employee's social security number 118-68-4143				11 Nonqualified plans		12 Benefits included in box 1							
e Employee's name (first, middle initial, last) WILLIAM G. POLSON 70 SPRING ST BROCKPORT NY 14420				13 See instrs. for box 13		14 Other							
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>	
f Employee's address and ZIP code		16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 283.00		18 State income tax 0.00		19 Locality name NY NO C		20 Local wages, tips, etc. 283.00		21 Local income tax 0.00	

Form **W-2** Wage and Tax Statement **1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 133		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008							
b Employer identification number 34-1790079				1 Wages, tips, other compensation 223.00		2 Federal income tax withheld 18.15							
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 223.00		4 Social security tax withheld 13.83							
				5 Medicare wages and tips 223.00		6 Medicare tax withheld 3.23							
				7 Social security tips 0.00		8 Allocated tips							
				9 Advance EIC payment		10 Dependent care benefits							
d Employee's social security number 123-72-2110				11 Nonqualified plans		12 Benefits included in box 1							
e Employee's name (first, middle initial, last) MEGHANN M. POWELL 26 FITCH STREET CHURCHVILLE NY 14428				13 See instrs. for box 13		14 Other							
				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>	
f Employee's address and ZIP code		16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 223.00		18 State income tax 0.00		19 Locality name NY NO C		20 Local wages, tips, etc. 223.00		21 Local income tax 0.00	

Form **W-2** Wage and Tax Statement **1999**

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 1380		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 96.00		2 Federal income tax withheld 0.00	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 96.00		4 Social security tax withheld 5.95	
				5 Medicare wages and tips 96.00		6 Medicare tax withheld 1.39	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 134-48-7583				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) JANE R. WRISLEY 124 MASON ST ROCHESTER NY 14613				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 96.00		18 State income tax 0.00	
				19 Locality name NY NO C		20 Local wages, tips, etc. 96.00	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

Department of the Treasury—Internal Revenue Service
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a Control number 233		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 438.00		2 Federal income tax withheld 0.00	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 438.00		4 Social security tax withheld 27.16	
				5 Medicare wages and tips 438.00		6 Medicare tax withheld 6.35	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 091-72-1315				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) JENNIFER M. ZAZZARO 64 STATT RD ROCHESTER NY 14624				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 438.00		18 State income tax 0.42	
				19 Locality name NY NO C		20 Local wages, tips, etc. 438.00	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement 1999**

36-2515832

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a Control number 361		22222		Void <input type="checkbox"/>		For Official Use Only OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 192.00		2 Federal income tax withheld 2.42	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 192.00		4 Social security tax withheld 11.90	
				5 Medicare wages and tips 192.00		6 Medicare tax withheld 2.78	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 095-66-6736				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) DUSTINE S. LAMONT 66 JERSEY ST ROCHESTER NY 14609				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deterred compensation <input type="checkbox"/>			
16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 192.00		18 State income tax 0.00		19 Locality name NY NO C	
				20 Local wages, tips, etc. 192.00		21 Local income tax 0.00	

Form **W-2** Wage and Tax **1999** Statement

36-2515832

Department of the Treasury—Internal Revenue Service

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a Control number 142		22222		Void <input type="checkbox"/>		For Official Use Only OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 9478.89		2 Federal income tax withheld 1069.84	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 9478.89		4 Social security tax withheld 587.69	
				5 Medicare wages and tips 9478.89		6 Medicare tax withheld 137.44	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 072-72-0665				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) JEREMY J. LANG 263 RIVER ST ROCHESTER NY 14612				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deterred compensation <input type="checkbox"/>			
16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 9478.89		18 State income tax 196.99		19 Locality name NY NO C	
				20 Local wages, tips, etc. 9478.89		21 Local income tax 0.00	

Form **W-2** Wage and Tax **1999** Statement

36-2515832

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a Control number 1073		22222		Void <input type="checkbox"/>		For Official Use Only OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 58839.38		2 Federal income tax withheld 5416.52	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 63327.38		4 Social security tax withheld 3926.30	
				5 Medicare wages and tips 63327.38		6 Medicare tax withheld 718.25	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 307-72-9013				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) DAVID R. BOWERS 1200 WIND WILLOW WAY APT 9 ROCHESTER NY 14624				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13 D 4488.00		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input checked="" type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input checked="" type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 58839.38		18 State income tax 2275.96	
						19 Locality name NY NO C	
						20 Local wages, tips, etc. 6332.00	
						21 Local income tax 0.00	

Form **W-2 Wage and Tax Statement** **1999**

36-2515832

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a Control number 101		22222		Void <input type="checkbox"/>		For Official Use Only OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 1667.00		2 Federal income tax withheld 154.65	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 1667.00		4 Social security tax withheld 103.35	
				5 Medicare wages and tips 1667.00		6 Medicare tax withheld 24.17	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 066-68-7756				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) WENDY J. BRICKELL 106 RED HICKORY DR ROCHESTER NY 14626				11 Nonqualified plans		12 Benefits included in box 1	
				13 See instrs. for box 13		14 Other	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State NY		Employer's state I.D. no. 34-1790079		17 State wages, tips, etc. 1667.00		18 State income tax 6.84	
						19 Locality name NY NO C	
						20 Local wages, tips, etc. 1667.00	
						21 Local income tax 0.00	

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Form **W-2 Wage and Tax Statement** **1999**

36-2515832

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a Control number 1013		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 36687.25		2 Federal income tax withheld 7232.33	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 59022.25		4 Social security tax withheld 3659.38	
				5 Medicare wages and tips 59022.25		6 Medicare tax withheld 855.82	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 069-60-8878				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) GENE A. AKE				11 Nonqualified plans		12 Benefits included in box 1	
1093 BRITTON RD ROCHESTER NY 14616				13 See instrs. for box 13 D 2335.00		14 Other	
				15 Statutory employee <input type="checkbox"/> Deceased <input type="checkbox"/> Pension plan <input checked="" type="checkbox"/> Legal rep. <input type="checkbox"/> Deferred compensation <input checked="" type="checkbox"/>			
f Employee's address and ZIP code				16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 56687.25	
				18 State income tax 2623.24		19 Locality name NY NO C	
				20 Local wages, tips, etc. 59579.00		21 Local income tax 0.00	

Form W-2 Wage and Tax Statement 1999

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a Control number 319		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number 34-1790079				1 Wages, tips, other compensation 194.00		2 Federal income tax withheld 10.65	
c Employer's name, address, and ZIP code EVERDRY MGT SERV/ROCHESTER 365 HIGHLAND RD E MACEDONIA OH 44056				3 Social security wages 194.00		4 Social security tax withheld 12.03	
				5 Medicare wages and tips 194.00		6 Medicare tax withheld 2.81	
				7 Social security tips 0.00		8 Allocated tips	
d Employee's social security number 060-66-2643				9 Advance EIC payment		10 Dependent care benefits	
e Employee's name (first, middle initial, last) JAMES R. ALEXANDER				11 Nonqualified plans		12 Benefits included in box 1	
288 ELECTRIC AVE ROCHESTER NY 14613				13 See instrs. for box 13		14 Other	
				15 Statutory employee <input type="checkbox"/> Deceased <input type="checkbox"/> Pension plan <input type="checkbox"/> Legal rep. <input type="checkbox"/> Deferred compensation <input type="checkbox"/>			
f Employee's address and ZIP code				16 State Employer's state I.D. no. NY 34-1790079		17 State wages, tips, etc. 194.00	
				18 State income tax 0.00		19 Locality name NY NO C	
				20 Local wages, tips, etc. 194.00		21 Local income tax 0.00	

Form W-2 Wage and Tax Statement 1999

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